

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JOHN GROSS,

Plaintiff,

v.

ORDER

12-cv-577-wmc

WILLIAM POLLARD, DON STRAHOTA,
JAMES OLSON, JOLENE MASON,
COREY BRADLEY, JASON ROSENTHAL,
WILLIAM HOLM and JAMES FOWLER,

Defendants.

Plaintiff John Gross filed this civil action under 42 U.S.C. § 1983, alleging that the defendants failed to protect him from assault by a female correctional officer and the court has granted plaintiff leave to proceed *in forma pauperis*. Most of the defendants have submitted an answer. Recently, however, the United States Marshal's Service filed a "Process Receipt and Return" form showing that it has been unable to serve plaintiff's complaint on defendant James Fowler. According to information obtained from his wife, Fowler is serving with the United States National Guard in Kuwait. The court concludes, therefore, that the United States Marshal has discharged its obligation to make reasonable efforts to locate and serve defendant Fowler, and has been unsuccessful. *See Sellers v. United States*, 902 F.2d 598, 602 (7th Cir. 1990).

Given Fowler's status, however, the action against him must be dismissed. *See* 50 U.S.C. App. § 521. This dismissal is without prejudice to plaintiff's filing a separate action against him upon his return from military service.

ORDER

IT IS ORDERED that defendant James Fowler is DISMISSED from this action, without prejudice to plaintiff's filing a lawsuit against him sometime in the future.

Entered this 6th day of June, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge